



## Appendix B

### Child Abuse Procedural and Evidentiary Statutes

#### **Immunity of hospital or rescue squad personnel for the acceptance of certain infants**

**VA Code §8.01–226.5:2**

Any personnel of a hospital or rescue squad receiving a child under the circumstances described in subsection B of §18.2–371, subdivision B 2 of §18.2–371.1 or subsection B of §40.1–103 shall be immune from civil liability or criminal prosecution for injury or other damage to the child unless such injury or other damage is the result of gross negligence or willful misconduct by such personnel.

#### **Competency of witness**

**VA Code §8.01–396.1**

No child shall be deemed incompetent to testify solely because of age.

#### **Purpose of the Sex Offender and Crimes Against Minors Registry**      **VA Code §9.1–900**

The purpose of the Sex Offender and Crimes Against Minors Registry (Registry) shall be to assist the efforts of law-enforcement agencies and others to protect their communities and families from repeat sex offenders and to protect children from becoming victims of criminal offenders by helping to prevent such individuals from being allowed to work directly with children.

#### **Persons for whom registration required**

**VA Code §9.1–901**

Every person convicted on or after July 1, 1994, of an offense set forth in §9.1–902 shall register and reregister as required by this chapter. Every person serving a sentence of confinement on or after July 1, 1994, for a conviction of an offense set forth in §9.1–902 shall register and reregister as required by this chapter. Every person under community supervision as defined by §53.1–1 or any similar form of supervision under the laws of the United States or any political subdivision thereof, on or after July 1, 1994, resulting from a conviction of an offense set forth in §9.1–902 shall register and reregister as required by this chapter.

#### **Offenses requiring registration**

**VA Code §9.1–902**

A. For purposes of this chapter “Offense for which registration is required” means:

1. A violation or attempted violation of §§18.2–63, 18.2–64.1, 18.2–67.2:1, 18.2–90 with the intent to commit rape, §18.2–374.1 or subsection D of §18.2–374.1:1 or a third or subsequent conviction of §18.2–67.4 or a third or subsequent conviction of subsection C of §18.2–67.5;
2. Where the victim is a minor or is physically helpless or mentally incapacitated as defined in §18.2–67.10, a violation or attempted violation of subsection A of §18.2–47, clause (i) or (iii) of § 18.2–48, § 18.2–67.4, subsection C of §18.2–67.5, §18.2–361 or §18.2–366;
3. A violation of Chapter 117 (18 U.S.C. §2421 et seq.) of Title 18 of the United States Code; or
4. A “sexually violent offense.” “Sexually violent offense” means a violation or attempted violation of:

- a. Clause (ii) of §18.2–48, §§18.2–61, 18.2–67.1, 18.2–67.2, 18.2–67.3, subsections A and B of §18.2–67.5, §18.2–370 or §18.2–370.1; or
  - b. Sections 18.2–63, 18.2–64.1, 18.2–67.2:1, §18.2–90 with the intent to commit rape or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in §18.2–67.10, a violation or attempted violation of subsection A of §18.2–47, §18.2–67.4, subsection C of §18.2–67.5, clause (i) or (iii) of §18.2–48, §§18.2–361, 18.2–366, or §18.2–374.1. Conviction of an offense listed under this subdivision shall be deemed a sexually violent offense only if the person has been convicted of any two or more such offenses, provided that person had been at liberty between such convictions.
- B. “Offense for which registration is required” and “sexually violent offense” shall also include any similar offense under the laws of the United States or any political subdivision thereof.

## **Registration procedures**

## **VA Code §9.1–903**

- A. Every person convicted, including juveniles tried and convicted in the circuit courts pursuant to §16.1–269.1, whether sentenced as an adult or juvenile, of an offense for which registration is required shall be required upon conviction to register and reregister with the Department of State Police. The court shall order the person to provide to the local law-enforcement agency of the county or city all information required by the State Police for inclusion in the Registry. The court shall remand the person to the custody of the local law-enforcement agency for the purpose of obtaining the person’s fingerprints and photographs of a type and kind specified by the State Police for inclusion in the Registry. The local law-enforcement agency shall forward to the State Police all the necessary registration information within seven days of the date of sentencing.
- B. Every person required to register shall register in person within 10 days of his release from confinement in a state, local or juvenile correctional facility or, if a sentence of confinement is not imposed, within 10 days of suspension of the sentence or in the case of a juvenile of disposition. The local law-enforcement agency shall obtain from the person who presents himself for registration or reregistration two sets of fingerprints, proof of residency and two photographs of a type and kind specified by the State Police for inclusion in the Registry and advise the person of his duties regarding reregistration. The local law-enforcement agency shall promptly forward to the State Police all necessary registration information.
- C. To establish proof of residence in Virginia, a person shall present one photo-identification form issued by a governmental agency of the Commonwealth which contains the person’s complete name, gender, date of birth and complete address.
- D. Any person required to register shall also reregister in person within 10 days with the local law-enforcement agency following any change of residence, whether within or without the Commonwealth. If a probation or parole officer becomes aware of a change of residence for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police within 10 days of learning of the change of residence. Whenever a person subject to

registration changes residence to another state, the State Police shall notify the designated law-enforcement agency of that state.

- E. The registration shall be maintained in the Registry and shall include the person's name, all aliases that he has used or under which he may have been known, the date and locality of the conviction for which registration is required, his fingerprints and a photograph of a type and kind specified by the State Police, his date of birth, social security number, current physical and mailing address and a description of the offense or offenses for which he was convicted. The registration shall also include the locality of the conviction and a description of the offense or offenses for previous convictions for the offenses set forth in §9.1–902.
- F. The local law-enforcement agency shall promptly forward to the State Police all necessary registration or reregistration information received by it. Upon receipt of registration or reregistration information the State Police shall forthwith notify the chief law-enforcement officer of the locality listed as the person's address on the registration and reregistration.

### **Reregistration**

### **VA Code §9.1–904**

Every person required to register, other than a person convicted of a sexually violent offense, shall reregister with the State Police on an annual basis from the date of the initial registration. Every person convicted of a sexually violent offense shall reregister with the State Police every 90 days from the date of initial registration. Reregistration means that the person has notified the State Police, confirmed his current physical and mailing address and provided such other information, including identifying information, which the State Police may require. Upon registration and as may be necessary thereafter, the State Police shall provide the person with an address verification form to be used for reregistration. The form shall contain in bold print a statement indicating that failure to comply with the registration required is punishable as a Class 1 misdemeanor or a Class 6 felony as provided in §18.2–472.1.

### **New residents and nonresident offenders; registration required**

### **VA Code §9.1–905**

- A. All persons required to register shall register within 10 days of establishing a residence in the Commonwealth.
- B. Nonresident offenders entering the Commonwealth for employment, to carry on a vocation, or as a student attending school who are required to register in their state of residence or who would be required to register if a resident of the Commonwealth shall, within 10 days of accepting employment or enrolling in school in the Commonwealth, be required to register and reregister in person with the local law-enforcement agency.
- C. To document employment or school attendance in Virginia a person shall present proof of enrollment as a student or suitable proof of temporary employment in the Commonwealth and one photo-identification form issued by a governmental agency of the person's state of residence which contains the person's complete name, gender, date of birth and complete address.
- D. For purposes of this section: "Employment" and "carry on a vocation" include employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time

exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. “Student” means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.

### **Enrollment or employment at institution of higher learning;**

#### **information required**

#### **VA Code §9.1–906**

- A. Persons required to register or reregister who are enrolled in or employed at institutions of higher learning shall, in addition to other registration requirements, indicate on their registration and reregistration form the name and location of the institution attended by or employing the registrant whether such institution is within or without the Commonwealth. In addition, persons required to register or reregister shall notify the local law-enforcement agency in person within 10 days of any change in their enrollment or employment status with an institution of higher learning. The local law-enforcement agency shall promptly forward to the State Police all necessary registration or reregistration information received by it.
- B. Upon receipt of a registration or reregistration indicating enrollment or employment with an institute of higher learning or notification of a change in status, the State Police shall notify the chief law-enforcement officer of the institution’s law-enforcement agency or, if there is no institutional law-enforcement agency, the local law-enforcement agency serving that institution, of the registration, reregistration, or change in status. The law-enforcement agency receiving notification under this section shall make such information available upon request.
- C. For purposes of this section: “Employment” includes full- or part-time, temporary or permanent or contractual employment at an institution of higher learning either with or without compensation. “Enrollment” includes both full- and part-time. “Institution of higher learning” means any post-secondary school, trade or professional institution, or institution of higher education.

### **Procedures upon a failure to register or reregister**

#### **VA Code §9.1–907**

Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register or reregister, the State Police shall promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant charging a violation of §18.2–472.1 in the jurisdiction in which the person last registered or reregistered or, if the person failed to comply with the duty to register, in the jurisdiction in which the person was last convicted of an offense for which registration or reregistration is required. The State Police shall forward to the jurisdiction, together with the warrant, an affidavit signed by the custodian of the records that such person failed to comply with the duty to register or reregister. Such affidavit shall be admitted into evidence as prima facie evidence of the failure to comply with the duty to register or reregister in any trial for the violation of §18.2–472.1. The State Police shall also promptly notify the local law-enforcement agency of the jurisdiction of the person’s last known residence as shown in the records of the State Police.

## **Duration of registration requirement**

**VA Code §9.1–908**

Any person required to register or reregister shall be required to register for a period of 10 years from the date of initial registration, except that any person who has been convicted of (i) any sexually violent offense, or (ii) §18.2–67.2:1 shall have a continuing duty to reregister for life. Any period of confinement in a federal, state or local correctional facility, hospital or any other institution or facility during the otherwise applicable 10-year period shall toll the registration period and the duty to reregister shall be extended. Persons confined in a federal, state, or local correctional facility shall not be required to reregister until released from custody.

## **Relief from registration or reregistration**

**VA Code §9.1–909**

- A. Upon expiration of three years from the date upon which the duty to register as a sexually violent offender is imposed, the person required to register may petition the court in which he was convicted for relief from the requirement to reregister every 90 days. The court shall hold a hearing on the petition, on notice to the attorney for the Commonwealth, to determine whether the person suffers from a mental abnormality or a personality disorder that makes the person a menace to the health and safety of others or significantly impairs his ability to control his sexual behavior. Prior to the hearing the court shall order a comprehensive assessment of the applicant by a panel of three certified sex offender treatment providers as defined in §54.1–3600. A report of the assessment shall be filed with the court prior to the hearing. The costs of the assessment shall be taxed as costs of the proceeding.

If, after consideration of the report and such other evidence as may be presented at the hearing, the court finds by clear and convincing evidence that the person does not suffer from a mental abnormality or a personality disorder that makes the person a menace to the health and safety of others or significantly impairs his ability to control his sexual behavior, the petition shall be granted and the duty to reregister every 90 days shall be terminated. The court shall promptly notify the State Police upon entry of an order granting the petition and the State Police shall remove Registry information on the offender from the Internet system. The person shall, however, be under a continuing duty to register annually for life. If the petition is denied, the duty to reregister every 90 days shall continue. An appeal from the denial of a petition shall lie to the Supreme Court.

A petition for relief pursuant to this subsection may not be filed within three years from the date on which any previous petition for such relief was denied.

- B. The duly appointed guardian of a person convicted of an offense requiring registration or reregistration as either a sex offender or sexually violent offender, who due to a physical condition is incapable of (i) reoffending and (ii) reregistering, may petition the court in which the person was convicted for relief from the requirement to reregister.

The court shall hold a hearing on the petition, on notice to the attorney for the Commonwealth, to determine whether the person suffers from a physical condition that makes the person (i) no longer a menace to the health and safety of others and (ii) incapable of reregistering. Prior to the



hearing the court shall order a comprehensive assessment of the applicant by at least two licensed physicians other than the person's primary care physician. A report of the assessment shall be filed with the court prior to the hearing. The costs of the assessment shall be taxed as costs of the proceeding.

If, after consideration of the report and such other evidence as may be presented at the hearing, the court finds by clear and convincing evidence that due to his physical condition the person (i) no longer poses a menace to the health and safety of others and (ii) is incapable of reregistering, the petition shall be granted and the duty to reregister shall be terminated. However, for a person whose duty to reregister was terminated under this subsection, the Department of State Police shall, annually for sex offenders and quarterly for sexually violent offenders, verify and report to the attorney for the Commonwealth in the jurisdiction in which the person resides that the person continues to suffer from the physical condition that resulted in such termination.

The court shall promptly notify the State Police upon entry of an order granting the petition to terminate the duty to reregister and the State Police shall remove any Registry information on the offender from the Internet system.

If the petition is denied, the duty to reregister shall continue. An appeal from the denial of a petition shall be to the Virginia Supreme Court.

A petition for relief pursuant to this subsection may not be filed within three years from the date on which any previous petition for such relief was denied.

If, at any time, the person's physical condition changes so that he is capable of reoffending or reregistering, the attorney for the Commonwealth shall file a petition with the circuit court in the jurisdiction where the person resides and the court shall hold a hearing on the petition, with notice to the person and his guardian, to determine whether the person still suffers from a physical condition that makes the person (i) no longer a menace to the health and safety of others and (ii) incapable of reregistering. If the petition is granted, the duty to reregister shall commence from the date of the court's order. An appeal from the denial or granting of a petition shall be to the Virginia Supreme Court. Prior to the hearing the court shall order a comprehensive assessment of the applicant by at least two licensed physicians other than the person's primary care physician. A report of the assessment shall be filed with the court prior to the hearing. The costs of the assessment shall be taxed as costs of the proceeding.

## **Removal of name and information from Registry**

## **VA Code §9.1–910**

- A. Any person required to register, other than a person who has been convicted of any (i) sexually violent offense, (ii) two or more offenses for which registration is required or (iii) a violation of §18.2–67.2:1, may petition the circuit court in which he was convicted or the circuit court in the jurisdiction where he then resides for removal of his name and all identifying information from the Registry. A petition may not be filed earlier than 10 years after the date of initial registration. The court shall hold a hearing on the petition at which the applicant and any interested persons may present witnesses and other evidence. If, after such hearing, the court is satisfied

that such person no longer poses a risk to public safety, the court shall grant the petition. In the event the petition is not granted, the person shall wait at least 24 months from the date of the denial to file a new petition for removal from the Registry.

- B. The State Police shall remove from the Registry the name of any person and all identifying information upon receipt of an order granting a petition pursuant to subsection A or at the end of the period for which the person is required to register under §9.1–908.

### **Registry maintenance**

### **VA Code §9.1–911**

The Registry shall include conviction data received from the courts, including the disposition records for juveniles tried and convicted in the circuit courts pursuant to §16.1–269.1, on convictions for offenses for which registration is required and registrations and deregistration received from persons required to do so. The Registry shall also include a separate indication that a person has been convicted of a sexually violent offense. The State Police shall forthwith transmit the appropriate information as required by the Federal Bureau of Investigation for inclusion in the National Sex Offender Registry.

### **Registry access and dissemination; fees**

### **VA Code §9.1–912**

- A. Except as provided in §9.1–913 and subsection B of this section, Registry information shall be disseminated upon request made directly to the State Police or to the State Police through a local law-enforcement agency. Such information may be disclosed to any person requesting information on a specific individual in accordance with subsection B. The State Police shall make Registry information available, upon request, to criminal justice agencies including local law-enforcement agencies through the Virginia Criminal Information Network (VCIN). Registry information provided under this section shall be used for the purposes of the administration of criminal justice, for the screening of current or prospective employees or volunteers or otherwise for the protection of the public in general and children in particular. The Superintendent of State Police may, by regulation, establish a fee not to exceed \$15 for responding to requests for information from the Registry. Any fees collected shall be deposited in a special account to be used to offset the costs of administering the Registry.
- B. Information regarding a specific person shall be disseminated upon receipt of an official request form that may be submitted directly to the State Police or to the State Police through a local law-enforcement agency. The official request form shall include a statement of the reason for the request; the name and address of the person requesting the information; the name, address and, if known, the social security number of the person about whom information is sought; and such other information as the State Police may require to ensure reliable identification.

### **Public dissemination by means of the Internet**

### **VA Code §9.1–913**

The State Police shall develop and maintain a system for making certain Registry information on violent sex offenders publicly available by means of the Internet. The information to be made available shall include the offender's name; all aliases that he has used or under which he may have been known; the date and locality of the conviction and a brief description of the offense; his age, current address and photograph; and such other information as the State Police may from time to time determine is necessary to preserve

public safety including but not limited to the fact that an individual is wanted for failing to register or reregister. The system shall be secure and not capable of being altered except by the State Police. The system shall be updated each business day with newly received registrations and deregistration. The State Police shall remove all information that it knows to be inaccurate from the Internet system.

#### **Automatic notification of registration to certain entities**

#### **VA Code §9.1–914**

Any school, day-care service and child-minding service, and any state-regulated or state-licensed child day center, child day program, children’s residential facility, family day home or foster home as defined in §63.2–100 may request from the State Police and, upon compliance with the requirements therefore established by the State Police, shall be eligible to receive from the State Police electronic notice of the registration or reregistration of any sex offender. Entities that request and are entitled to this notification, and that do not have the capability of receiving such electronic notice, may register with the State Police to receive written notification of sex offender registration or reregistration.

Within three business days of receipt by the State Police of registration or reregistration, the State Police shall electronically or in writing notify an entity that has requested such notification, has complied with the requirements established by the State Police and is located in the same or a contiguous zip code area as the address of the offender as shown on the registration.

The State Police shall establish reasonable guidelines governing the automatic dissemination of Registry information, which may include the payment of a fee, whether a one-time fee or a regular assessment, to maintain the electronic access. The fee, if any, shall defray the costs of establishing and maintaining the electronic notification system and notice by mail.

For the purposes of this section, “day-care service” means provision of supplementary care and protection during a part of the day for the minor child of another; “child-minding service” means provision of temporary custodial care or supervisory services for the minor child of another; and “school” means any public, parochial, denominational or private educational institution, including any preschool, elementary school, secondary school, post-secondary school, trade or professional institution, or institution of higher education.

#### **Regulations**

#### **VA Code §9.1–915**

The Superintendent of State Police shall promulgate regulations and develop forms to implement and enforce this chapter; including the operation and maintenance of the Registry and the removal of records on persons who are deceased, whose convictions have been reversed or who have been pardoned, and those for whom an order of removal or relief from frequent registration has been entered. Such regulations and forms shall not be subject to the provisions of Article 2 (§2.2–4006 et seq.) of the Administrative Process Act.

#### **Limitation on liability**

#### **VA Code §9.1–916**

No liability shall be imposed upon any law-enforcement official who disseminates information or fails to disseminate information in good faith compliance with the requirements of this chapter, but this provision shall not be construed to grant immunity for gross negligence or willful misconduct.



**Misuse of registry information; penalty****VA Code §9.1–917**

Use of registry information for purposes not authorized by this chapter is prohibited, the unlawful use of the information contained in or derived from the Registry for purposes of intimidating or harassing another is prohibited, and a willful violation of this chapter is a Class 1 misdemeanor.

**Severability; liberal construction****VA Code §9.1–918**

The provisions of this chapter are severable, and if any of its provisions shall be declared unconstitutional or invalid by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the other provisions of this chapter. This chapter, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect the purposes hereof.

**Power of circuit court over juvenile offender****VA Code §16.1–272**

- A. In any case in which a juvenile is indicted, the offense for which he is indicted and all ancillary charges shall be tried in the same manner as provided for in the trial of adults, except as otherwise provided with regard to sentencing. Upon a finding of guilty of any charge other than capital murder, the court shall fix the sentence without the intervention of a jury.
  1. If a juvenile is convicted of a violent juvenile felony, for that offense and for all ancillary crimes the court may order that (i) the juvenile serve a portion of the sentence as a serious juvenile offender under §16.1-285.1 and the remainder of such sentence in the same manner as provided for adults; (ii) the juvenile serve the entire sentence in the same manner as provided for adults; or (iii) the portion of the sentence to be served in the same manner as provided for adults be suspended conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case including, but not limited to, commitment under subdivision 14 of §16.1–278.8 or §16.1–285.1.
  2. If the juvenile is convicted of any other felony, the court may sentence or commit the juvenile offender in accordance with the criminal laws of this Commonwealth or may in its discretion deal with the juvenile in the manner prescribed in this chapter for the hearing and disposition of cases in the juvenile court, including, but not limited to, commitment under §16.1–285.1 or may in its discretion impose an adult sentence and suspend the sentence conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case.
  3. If the juvenile is not convicted of a felony but is convicted of a misdemeanor, the court shall deal with the juvenile in the manner prescribed by law for the disposition of a delinquency case in the juvenile court.
- B. If the circuit court decides to deal with the juvenile in the same manner as a case in the juvenile court and places the juvenile on probation, the juvenile may be supervised by a juvenile probation officer.

- C. Whether the court sentences and commits the juvenile as a juvenile under this chapter or under the criminal law, in cases where the juvenile is convicted of a felony in violation of §§18.2–61, 18.2–63, 18.2–64.1, 18.2–67.1, 18.2–67.2, 18.2–67.3, 18.2–67.5, 18.2–370 or 18.2–370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in §18.2–67.10, subsection B of §18.2–361 or subsection B of §18.2–366, the clerk shall make the report required by §19.2–390 to the Sex Offender and Crimes Against Minors Registry established pursuant to §19.2–390.1 Chapter 9 (§9.1-900 et seq.) of Title 9.1.

## **Mandatory HIV testing**

## **VA Code §18.2–62**

- A. As soon as practicable following arrest, the attorney for the Commonwealth may request, after consultation with any victim, that any person charged with any crime involving sexual assault pursuant to this article or any offenses against children as prohibited by §§18.2–361, 18.2–366, 18.2–370, and 18.2–370.1 be requested to submit to testing for infection with human immunodeficiency virus. The person so charged shall be counseled about the meaning of the test, about acquired immunodeficiency syndrome, and about the transmission and prevention of infection with human immunodeficiency virus.

If the person so charged refuses to submit to the test or the competency of the person to consent to the test is at issue, the court with jurisdiction of the case shall hold a hearing to determine whether there is probable cause that the individual has committed the crime with which he is charged. If the court finds probable cause, the court shall order the accused to undergo testing for infection with human immunodeficiency virus. The court may enter such an order in the absence of the defendant if the defendant is represented at the hearing by counsel or a guardian ad litem. The court's finding shall be without prejudice to either the Commonwealth or the person charged and shall not be evidence in any proceeding, civil or criminal.

- B. Upon conviction, or adjudication as delinquent in the case of a juvenile, of any crime involving sexual assault pursuant to this article or any offenses against children as prohibited by §§18.2–361, 18.2–366, 18.2–370, and 18.2–370.1, the attorney for the Commonwealth may, after consultation with any victim and, upon the request of any victim shall, request and the court shall order the defendant to submit to testing for infection with human immunodeficiency virus. Any test conducted following conviction shall be in addition to such tests as may have been conducted following arrest pursuant to subsection A.
- C. Confirmatory tests shall be conducted before any test result shall be determined to be positive. The results of the tests for infection with human immunodeficiency virus shall be confidential as provided in §32.1–36.1; however, the Department of Health shall also disclose the results to any victim and offer appropriate counseling as provided by subsection B of §32.1–37.2. The Department shall conduct surveillance and investigation in accordance with §32.1–39.

The results of such tests shall not be admissible as evidence in any criminal proceeding.

The cost of such tests shall be paid by the Commonwealth and taxed as part of the cost of such criminal proceedings.

**Use of videotaped testimony****VA Code §18.2–67**

Before or during the trial for an offense or attempted offense under this article, the judge of the court in which the case is pending, with the consent of the accused first obtained in open court, by an order of record, may direct that the deposition of the complaining witness be taken at the time and place designated in the order, and the judge may adjourn the taking thereof to such other time and places as he may deem necessary. Such deposition shall be taken before a judge of a circuit court in the county or city in which the offense was committed or the trial is had, and the judge shall rule upon all questions of evidence, and otherwise control the taking of the same as though it were taken in open court. At the taking of such deposition the attorney for the Commonwealth, as well as the accused and his attorneys, shall be present and they shall have the same rights in regard to the examination of such witness as if he or she were testifying in open court. No other person shall be present unless expressly permitted by the judge. Such deposition shall be read to the jury at the time such witness might have testified if such deposition had not been taken, and shall be considered by them, and shall have the same force and effect as though such testimony had been given orally in court. The judge may, in like manner, direct other depositions of the complaining witness, in rebuttal or otherwise, which shall be taken and read in the manner and under the conditions herein prescribed as to the first deposition. The cost of taking such depositions shall be paid by the Commonwealth.

**Admission of evidence (rape shield)****VA Code §18.2–67.7**

- A. In prosecutions under this article, general reputation or opinion evidence of the complaining witness's unchaste character or prior sexual conduct shall not be admitted. Unless the complaining witness voluntarily agrees otherwise, evidence of specific instances of his or her prior sexual conduct shall be admitted only if it is relevant and is:
  1. Evidence offered to provide an alternative explanation for physical evidence of the offense charged which is introduced by the prosecution, limited to evidence designed to explain the presence of semen, pregnancy, disease, or physical injury to the complaining witness's intimate parts; or
  2. Evidence of sexual conduct between the complaining witness and the accused offered to support a contention that the alleged offense was not accomplished by force, threat or intimidation or through the use of the complaining witness's mental incapacity or physical helplessness, provided that the sexual conduct occurred within a period of time reasonably proximate to the offense charged under the circumstances of this case; or
  3. Evidence offered to rebut evidence of the complaining witness's prior sexual conduct introduced by the prosecution.
- B. Nothing contained in this section shall prohibit the accused from presenting evidence relevant to show that the complaining witness had a motive to fabricate the charge against the accused. If such evidence relates to the past sexual conduct of the complaining witness with a person other than the accused, it shall not be admitted and may not be referred to at any preliminary hearing or trial unless the party offering same files a written notice generally describing the evidence prior

to the introduction of any evidence, or the opening statement of either counsel, whichever first occurs, at the preliminary hearing or trial at which the admission of the evidence may be sought.

- C. Evidence described in subsection A and B of this section shall not be admitted and may not be referred to at any preliminary hearing or trial until the court first determines the admissibility of that evidence at an evidentiary hearing to be held before the evidence is introduced at such preliminary hearing or trial. The court shall exclude from the evidentiary hearing all persons except the accused, the complaining witness, other necessary witnesses, and required court personnel. If the court determines that the evidence meets the requirements of subsections A and B of this section, it shall be admissible before the judge or jury trying the case in the ordinary course of the preliminary hearing or trial. If the court initially determines that the evidence is inadmissible, but new information is discovered during the course of the preliminary hearing or trial which may make such evidence admissible, the court shall determine in an evidentiary hearing whether such evidence is admissible.

### **Closed preliminary hearings**

### **VA Code §18.2–67.8**

In preliminary hearings for offenses charged under this article or under §§18.2–361, 18.2–366, 18.2–370 or 18.2–370.1, the court may, on its own motion or at the request of the Commonwealth, the complaining witness, the accused, or their counsel, exclude from the courtroom all persons except officers of the court and persons whose presence, in the judgment of the court, would be supportive of the complaining witness or the accused and would not impair the conduct of a fair hearing.

### **Use of closed-circuit television testimony**

### **VA Code §18.2–67.9**

- A. The provisions of this section shall apply to an alleged victim who was fourteen years of age or under at the time of the alleged offense and is sixteen or under at the time of the trial and to a witness who is fourteen years of age or under at the time of the trial.

In any criminal proceeding, including preliminary hearings, involving an alleged offense against a child, relating to a violation of the laws pertaining to kidnapping (§18.2–47 et seq.), criminal sexual assault (§18.2–61 et seq.) or family offenses pursuant to Article 4 (§18.2–362 et seq.) of Chapter 8 of Title 18.2, or involving an alleged murder of a person of any age, the attorney for the Commonwealth or the defendant may apply for an order from the court that the testimony of the alleged victim or a child witness be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The party seeking such order shall apply for the order at least seven days before the trial date or at least seven days before such other preliminary proceeding to which the order is to apply.

- B. The court may order that the testimony of the child be taken by closed-circuit television as provided in subsection A if it finds that the child is unavailable to testify in open court in the presence of the defendant, the jury, the judge, and the public, for any of the following reasons:
1. The child's persistent refusal to testify despite judicial requests to do so;
  2. The child's substantial inability to communicate about the offense; or

3. The substantial likelihood, based upon expert opinion testimony, that the child will suffer severe emotional trauma from so testifying.

Any ruling on the child's unavailability under this subsection shall be supported by the court with findings on the record or with written findings in a court not of record.

- C. In any proceeding in which closed-circuit television is used to receive testimony, the attorney for the Commonwealth and the defendant's attorney shall be present in the room with the child, and the child shall be subject to direct and cross-examination. The only other persons allowed to be present in the room with the child during his testimony shall be those persons necessary to operate the closed-circuit equipment, and any other person whose presence is determined by the court to be necessary to the welfare and well-being of the child.
- D. The child's testimony shall be transmitted by closed-circuit television into the courtroom for the defendant, jury, judge and public to view. The defendant shall be provided with a means of private, contemporaneous communication with his attorney during the testimony.
- E. Notwithstanding any other provision of law, none of the cost of the two-way closed-circuit television shall be assessed against the defendant.

**Venue where any person transported for criminal sexual assault, attempted criminal sexual assault, or purposes of unlawful sexual intercourse, crimes against nature, and indecent liberties with children**

**VA Code §18.2-359**

- A. Any person transporting or attempting to transport through or across this Commonwealth, any person for the purposes of unlawful sexual intercourse or prostitution, or for the purpose of committing any crime specified in §18.2-361 or §18.2-370, may be presented, indicted, tried, and convicted in any county or city in which any part of such transportation occurred.
- B. Venue for the trial of any person charged with committing or attempting to commit criminal sexual assault under Article 7 (§18.2-61 et seq.) of Chapter 4 of this title may be had in the county or city in which such crime is alleged to have occurred or in any county or city through which the victim was transported by the defendant prior to the commission of such offense.

**Providing false information or failing to provide registration information; penalty; prima facie evidence**

**VA Code §18.2-472.1**

Any person subject to §19.2-298.1 Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, other than a person convicted of a sexually violent offender offense, who knowingly fails to register or reregister, or who knowingly provides materially false information to the Sex Offender and Crimes Against Minors Registry shall be is guilty of a Class 1 misdemeanor. However, any person convicted of a sexually violent offense, as defined in §19.2-298.1 9.1-902, who knowingly fails to register or reregister, or who knowingly provides materially false information to the Sex Offender and Crimes Against Minors Registry established pursuant to §19.2-390.1 shall be is guilty of a Class 6 felony.



A prosecution pursuant to this section shall be brought in the city or county where the registrant offender can be found or where the offender last registered or reregistered or, if the offender failed to comply with the duty to register, where the offender was last convicted of an offense for which registration or reregistration is required.

At any trial pursuant to this section, an affidavit from the State Police issued as required in subsection H of §19.2–298.1 §9.1–907 shall be admitted into evidence as prima facie evidence of the failure to comply with the duty to register or reregister and a copy of such affidavit shall be provided to the registrant or his counsel seven days prior to hearing or trial by the attorney for the Commonwealth.

## **Crime victim and witness rights**

## **VA Code §19.2–11.01**

- A. In recognition of the Commonwealth’s concern for the victims and witnesses of crime, it is the purpose of this chapter to ensure that the full impact of crime is brought to the attention of the courts of the Commonwealth; that crime victims and witnesses are treated with dignity, respect and sensitivity; and that their privacy is protected to the extent permissible under law.

It is the further purpose of this chapter to ensure that victims and witnesses are informed of the rights provided to them under the laws of the Commonwealth; that they receive authorized services as appropriate; and that they have the opportunity to be heard by law-enforcement agencies, attorneys for the Commonwealth, corrections agencies and the judiciary at all critical stages of the criminal justice process to the extent permissible under law. Unless otherwise stated and subject to the provisions of §19.2–11.1, it shall be the responsibility of a locality’s crime victim and witness assistance program to provide the information and assistance required by this chapter, including verification that the standardized form listing the specific rights afforded to crime victims has been received by the victim.

Following a crime, law-enforcement personnel shall provide the victim with a standardized form listing the specific rights afforded to crime victims. The form shall include a telephone number by which the victim can receive further information and assistance in securing the rights afforded crime victims.

### **1. Victim and witness protection.**

- a. In order that victims and witnesses receive protection from harm and threats of harm arising out of their cooperation with law-enforcement, or prosecution efforts, they shall be provided with information as to the level of protection which may be available pursuant to §52-35 or to any other federal, state or local program providing protection, and shall be assisted in obtaining this protection from the appropriate authorities.
- b. Victims and witnesses shall be provided, where available, a separate waiting area during court proceedings that affords them privacy and protection from intimidation.

### **2. Financial assistance.**

- a. Victims shall be informed of financial assistance and social services available to them as victims of a crime, including information on their possible right to file a claim for

compensation from the Crime Victims' Compensation Fund pursuant to Chapter 21.1 (§19.2–368.1 et seq.) of this title and on other available assistance and services.

- b. Victims shall be assisted in having any property held by law-enforcement agencies for evidentiary purposes returned promptly in accordance with §§19.2–270.1 and 19.2–270.2.
- c. Victims shall be advised that restitution is available for damages or loss resulting from an offense and shall be assisted in seeking restitution in accordance with §§19.2–305, 19.2–305.1, Chapter 21.1 (§19.2–368.1 et seq.) of this title, Article 21 (§58.1–520 et seq.) of Chapter 3 of Title 58.1, and other applicable laws of the Commonwealth.

### 3. Notices.

- a. Victims and witnesses shall be (i) provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances and (ii) advised that pursuant to §18.2–465.1 it is unlawful for an employer to penalize an employee for appearing in court pursuant to a summons or subpoena.
- b. Victims shall receive advance notification when practicable from the attorney for the Commonwealth of judicial proceedings relating to their case and shall be notified when practicable of any change in court dates in accordance with §19.2–265.01 if they have provided their names, current addresses and telephone numbers.
- c. Victims shall receive notification, if requested, subject to such reasonable procedures as the Attorney General may require pursuant to §2.2–511, from the Attorney General of the filing and disposition of any appeal or habeas corpus proceeding involving their case.
- d. Victims shall be notified by the Department of Corrections or a sheriff or jail superintendent in whose custody an escape, change of name, transfer, release or discharge of a prisoner occurs pursuant to the provisions of §§53.1–133.02 and 53.1–160 if they have provided their names, current addresses and telephone numbers in writing.
- e. Victims shall be advised that, in order to protect their right to receive notices and offer input, all agencies and persons having such duties must have current victim addresses and telephone numbers given by the victims. Victims shall also be advised that any such information given shall be confidential as provided by §19.2–11.2.

### 4. Victim input.

- a. Victims shall be given the opportunity, pursuant to §19.2–299.1, to prepare a written victim impact statement prior to sentencing of a defendant and may provide information to any individual or agency charged with investigating the social history of a person or preparing a victim impact statement under the provisions of §§16.1–273 and 53.1–155 or any other applicable law.

- b. Victims shall have the right to remain in the courtroom during a criminal trial or proceeding pursuant to the provisions of §19.2–265.01.
- c. On motion of the attorney for the Commonwealth, victims shall be given the opportunity, pursuant to §§19.2–264.4 and 19.2–295.3, to testify prior to sentencing of a defendant regarding the impact of the offense.
- d. In a felony case, the attorney for the Commonwealth, upon the victim’s written request, shall consult with the victim either verbally or in writing (i) to inform the victim of the contents of a proposed plea agreement and (ii) to obtain the victim’s views concerning plea negotiations. However, nothing in this section shall limit the ability of the attorney for the Commonwealth to exercise his discretion on behalf of the citizens of the Commonwealth in the disposition of any criminal case. The court shall not accept the plea agreement unless it finds that, except for good cause shown, the Commonwealth has complied with clauses (i) and (ii). Good cause shown shall include, but not be limited to, the unavailability of the victim due to incarceration, hospitalization, failure to appear at trial when subpoenaed, or change of address without notice.

Upon the victim’s written request, the victim shall be notified in accordance with subdivision A 3 b of any proceeding in which the plea agreement will be tendered to the court.

The responsibility to consult with the victim under this subdivision shall not confer upon the defendant any substantive or procedural rights and shall not affect the validity of any plea entered by the defendant.

#### 5. Courtroom assistance.

- a. Victims and witnesses shall be informed that their addresses and telephone numbers may not be disclosed, pursuant to the provisions of §§19.2–11.2 and 19.2–269.2, except when necessary for the conduct of the criminal proceeding.
- b. Victims and witnesses shall be advised that they have the right to the services of an interpreter in accordance with §§19.2–164 and 19.2–164.1.
- c. Victims and witnesses of certain sexual offenses shall be advised that there may be a closed preliminary hearing in accordance with §18.2–67.8 and, if a victim was fourteen years of age or younger on the date of the offense and is sixteen or under at the time of the trial, or a witness to the offense is fourteen years of age or younger at the time of the trial, that two-way closed-circuit television may be used in the taking of testimony in accordance with §18.2–67.9.

- B. For purposes of this chapter, “victim” means (i) a person who has suffered physical, psychological or economic harm as a direct result of the commission of a felony or of assault and battery in violation of §18.2–57 or §18.2–57.2, stalking in violation of §18.2–60.3, sexual battery in

violation of §18.2–67.4, attempted sexual battery in violation of §18.2–67.5, maiming or driving while intoxicated in violation of §18.2–51.4 or §18.2–266, (ii) a spouse or child of such a person, (iii) a parent or legal guardian of such a person who is a minor, or (iv) a spouse, parent, sibling or legal guardian of such a person who is physically or mentally incapacitated or was the victim of a homicide; however, “victim” does not mean a parent, child, spouse, sibling or legal guardian who commits a felony or other enumerated criminal offense against a victim as defined in clause (i).

- C. Officials and employees of the judiciary, including court services units, law-enforcement agencies, the Department of Corrections, attorneys for the Commonwealth and public defenders, shall be provided with copies of this chapter by the Department of Criminal Justice Services or a crime victim and witness assistance program. Each agency, officer or employee who has a responsibility or responsibilities to victims under this chapter or other applicable law shall make reasonable efforts to become informed about these responsibilities and to ensure that victims and witnesses receive such information and services to which they may be entitled under applicable law, provided that no liability or cause of action shall arise from the failure to make such efforts or from the failure of such victims or witnesses to receive any such information or services.

#### **Victim-witness assistance programs**

**VA Code §19.2–11.1**

Any local governmental body which establishes, operates and maintains a crime victim and witness assistance program, whose funding is provided in whole or part by grants administered by the Department of Criminal Justice Services pursuant to §9.1–104, shall operate the program in accordance with guidelines which shall be established by the Department to implement the provisions of this chapter and other applicable laws establishing victims’ rights.

#### **Crime victim’s right to nondisclosure of certain information; exceptions; testimonial privilege**

**VA Code §19.2–11.2**

Upon request of any crime victim, neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the Department of Corrections, nor any employee of any of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the victim or a member of the victim’s family, except to the extent that disclosure is (i) of the site of the crime, (ii) required by law or Rules of the Supreme Court, (iii) necessary for law-enforcement purposes, or (iv) permitted by the court for good cause.

Except with the written consent of the victim, a law-enforcement agency may not disclose to the public information which directly or indirectly identifies the victim of a crime involving any sexual assault, sexual abuse or family abuse, except to the extent that disclosure is (i) of the site of the crime, (ii) required by law, (iii) necessary for law-enforcement purposes, or (iv) permitted by the court for good cause.

Nothing herein shall limit the right to examine witnesses in a court of law or otherwise affect the conduct of any criminal proceeding.

**Establishment of victim-offender reconciliation program****VA Code §19.2–11.4**

- A. Any Crime Victim and Witness Assistance Program may establish a victim-offender reconciliation program to provide an opportunity after conviction for a victim, at his request and upon the subsequent agreement of the offender, to:
  - 1. Meet with the offender in a safe, controlled environment;
  - 2. Give to the offender, either orally or in writing, a summary of the financial, emotional, and physical effects of the offense on the victim or the victim's family; and
  - 3. Discuss a proposed restitution agreement which may be submitted for consideration by the sentencing court for damages incurred by the victim as a result of the offense.
- B. If the victim chooses to participate in a victim-offender reconciliation program under this section, the victim shall execute a waiver releasing the Crime Victim and Witness Assistance Program, attorney for the offender and the attorney for the Commonwealth from civil and criminal liability for actions taken by the victim or offender as a result of participation by the victim or the offender in a victim-offender reconciliation program.
- C. A victim shall not be required to participate in a victim-offender reconciliation program under this section.
- D. The failure of any person to participate in a reconciliation program pursuant to this section shall not be used directly or indirectly at sentencing.

**Arrest without a warrant in cases of assault and battery  
against a household member****VA Code §19.2–81.3**

- A. Any law-enforcement officer, as defined in §19.2–81, may arrest without a warrant for an alleged violation of §§18.2–57.2, 18.2–60.4 or §16.1–253.2 regardless of whether such violation was committed in his presence, if such arrest is based on probable cause or upon personal observations or the reasonable complaint of a person who observed the alleged offense or upon personal investigation.
- B. A law-enforcement officer having probable cause to believe that a violation of §18.2–57.2 or §16.1–253.2 has occurred shall arrest and take into custody the person he has probable cause to believe, based on the totality of the circumstances, was the primary physical aggressor unless there are special circumstances which would dictate a course of action other than an arrest.
- C. Regardless of whether an arrest is made, the officer shall file a written report with his department, which shall state whether any arrests were made, and if so, the number of arrests, specifically including any incident in which he has probable cause to believe family abuse has occurred, and, where required, including a complete statement in writing that there are special circumstances that would dictate a course of action other than an arrest. The officer shall provide the allegedly abused person, both orally and in writing, information regarding the legal and community resources available to the allegedly abused person.



Upon request of the allegedly abused person, the department shall make a summary of the report available to the allegedly abused person.

- D. In every case in which a law-enforcement officer makes an arrest under this section, he shall petition for an emergency protective order as authorized in §16.1–253.4 when the person arrested and taken into custody is brought before the magistrate, except if the person arrested is a minor, a petition for an emergency protective order shall not be required. Regardless of whether an arrest is made, if the officer has probable cause to believe that a danger of acts of family abuse exists, the law-enforcement officer shall seek an emergency protective order under §16.1–253.4, except if the suspected abuser is a minor, a petition for an emergency protective order shall not be required.
- E. A law-enforcement officer investigating any complaint of family abuse, including but not limited to assault and battery against a family or household member shall, upon request, transport, or arrange for the transportation of an abused person to a hospital, safe shelter, or magistrate. Any local law-enforcement agency may adopt a policy requiring an officer to transport or arrange for transportation of an abused person as provided in this subsection.
- F. The definition of “family or household member” in §16.1–228 applies to this section.
- G. As used in this section, a “law-enforcement officer” means (i) any full-time or part-time employee of a police department or sheriff’s office which is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this Commonwealth and (ii) any member of an auxiliary police force established pursuant to subsection B of §15.2–1731. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff’s office.

### **Speedy trial**

### **VA Code §19.2–243**

Where a general district court has found that there is probable cause to believe that the accused has committed a felony, the accused, if he is held continuously in custody thereafter, shall be forever discharged from prosecution for such offense if no trial is commenced in the circuit court within five months from the date such probable cause was found by the district court; and if the accused is not held in custody but has been recognized for his appearance in the circuit court to answer for such offense, he shall be forever discharged from prosecution therefore if no trial is commenced in the circuit court within nine months from the date such probable cause was found.

If there was no preliminary hearing in the district court, or if such preliminary hearing was waived by the accused, the commencement of the running of the five and nine months periods, respectively, set forth in this section, shall be from the date an indictment or presentment is found against the accused.

If an indictment or presentment is found against the accused but he has not been arrested for the offense charged therein, the five and nine months periods, respectively, shall commence to run from the date of his arrest thereon.

Where a case is before a circuit court on appeal from a conviction of a misdemeanor or traffic infraction in a district court, the accused shall be forever discharged from prosecution for such offense if the trial de novo in the circuit court is not commenced (i) within five months from the date of the conviction if the accused has been held continuously in custody or (ii) within nine months of the date of the conviction if the accused has been recognized for his appearance in the circuit court.

The provisions of this section shall not apply to such period of time as the failure to try the accused was caused:

- A. By his insanity or by reason of his confinement in a hospital for care and observation;
- B. By the witnesses for the Commonwealth being enticed or kept away, or prevented from attending by sickness or accident;
- C. By the granting of a separate trial at the request of a person indicted jointly with others for a felony;
- D. By continuance granted on the motion of the accused or his counsel, or by concurrence of the accused or his counsel in such a motion by the attorney for the Commonwealth, or by the failure of the accused or his counsel to make a timely objection to such a motion by the attorney for the Commonwealth, or by reason of his escaping from jail or failing to appear according to his recognizance; or
- E. By the inability of the jury to agree in their verdict.

But the time during the pendency of any appeal in any appellate court shall not be included as applying to the provisions of this section.

For the purposes of this section, a trial is deemed commenced at the point when jeopardy would attach or when a plea of guilty or nolo contendere is tendered by the defendant.

### **Joinder of defendants**

### **VA Code §19.2–262.1**

On motion of the Commonwealth, for good cause shown, the court shall order persons charged with participating in contemporaneous and related acts or occurrences or in a series of acts or occurrences constituting an offense or offenses, to be tried jointly unless such joint trial would constitute prejudice to a defendant. If the court finds that a joint trial would constitute prejudice to a defendant, the court shall order severance as to that defendant or provide such other relief justice requires.

### **Excluding witnesses**

### **VA Code §19.2–265.01**

During the trial of every criminal case and in all court proceedings attendant to trial, whether before, during or after trial, including any proceedings occurring after an appeal by the defendant or the Commonwealth, at which attendance by the defendant is permitted, whether in a circuit or district court, any victim as defined in §19.2–11.01 may remain in the courtroom and shall not be excluded unless the court determines, in its discretion, the presence of the victim would impair the conduct of a fair trial. In any case involving a minor victim, the court may permit an adult chosen by the minor to be present in the courtroom during any proceedings in addition to or in lieu of the minor's parent or guardian.

The attorney for the Commonwealth shall give prior notice when practicable of such trial and attendant proceedings and changes in the scheduling thereof to any known victim and to any known adult chosen in accordance with this section by a minor victim, at the address or telephone number, or both, provided in writing by such person.

**Provisions applicable to witnesses in criminal as well as civil cases; obligation to attend; summons**

**VA Code §19.2–267**

Sections 8.01–396.1, 8.01–402, 8.01–405 and 8.01–407 to 8.01–410, inclusive, shall apply to a criminal as well as a civil case in all respects, except that a witness in a criminal case shall be obliged to attend, and may be proceeded against for failing to do so, although there may not previously have been any payment, or tender to him of anything for attendance, mileage, or tolls. In a criminal case a summons for a witness may be issued by the attorney for the Commonwealth or other attorney charged with the responsibility for the prosecution of a violation of any ordinance; however, any attorney who issues such a summons shall, at the time of the issuance, file with the clerk of the court the names and addresses of such witnesses.

**Prompt complaint**

**VA Code §19.2–268.2**

Notwithstanding any other provision of law, in any prosecution for criminal sexual assault under Article 7 (§18.2–61 et. seq.) of Chapter 4 of Title 18.2, a violation of §§18.2–361, 18.2–366, 18.2–370 or §18.2–370.1, the fact that the person injured made complaint of the offense recently after commission of the offense is admissible, not as independent evidence of the offense, but for the purpose of corroborating the testimony of the complaining witness.

**Protecting the identity of witnesses**

**VA Code §19.2–269.2**

During any criminal proceeding, upon motion of the defendant or the attorney for the Commonwealth, a judge may prohibit testimony as to the current address or telephone number of a victim or witness if the judge determines that this information is not material under the circumstances of the case.

**Admissibility of DNA evidence**

**VA Code §19.2–270.5**

In any criminal proceeding, DNA (deoxyribonucleic acid) testing shall be deemed to be a reliable scientific technique and the evidence of a DNA profile comparison may be admitted to prove or disprove the identity of any person. This section shall not otherwise limit the introduction of any relevant evidence bearing upon any question at issue before the court, including the accuracy and reliability of the procedures employed in the collection and analysis of a particular DNA sample. The court shall, regardless of the results of the DNA analysis, if any, consider such other relevant evidence of the identity of the accused as shall be admissible in evidence.

At least twenty-one days prior to commencement of the proceeding in which the results of a DNA analysis will be offered as evidence, the party intending to offer the evidence shall notify the opposing party, in writing, of the intent to offer the analysis and shall provide or make available copies of the profiles and the report or statement to be introduced. In the event that such notice is not given, and the person proffers such evidence, then the court may in its discretion either allow the opposing party a continuance or, under appropriate circumstances, bar the person from presenting such evidence. The period of any such

continuance shall not be counted for speedy trial purposes under §19.2–243. If the opposing party intends to object to the admissibility of such evidence he shall give written notice of that fact and the basis for his objections at least ten days prior to commencement of the proceedings.

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**Evidence of abuse****VA Code §19.2–270.6**

In any criminal prosecution alleging personal injury or death, or the attempt to cause personal injury or death, relevant evidence of repeated physical and psychological abuse of the accused by the victim shall be admissible, subject to the general rules of evidence.

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**Marital privilege****VA Code §19.2–271.2**

In criminal cases husband and wife shall be allowed, and, subject to the rules of evidence governing other witnesses and subject to the exception stated in §8.01–398, may be compelled to testify in behalf of each other, but neither shall be compelled to be called as a witness against the other, except (i) in the case of a prosecution for an offense committed by one against the other or against a minor child of either, (ii) in any case where either is charged with forgery of the name of the other or uttering or attempting to utter a writing bearing the allegedly forged signature of the other or (iii) in any proceeding relating to a violation of the laws pertaining to criminal sexual assault (§§18.2–61 through 18.2–67.10), crimes against nature (§18.2–361) involving a minor as a victim and provided the defendant and the victim are not married to each other, incest (§ 18.2–366), or abuse of children (§§18.2–370 through 18.2–371). The failure of either husband or wife to testify, however, shall create no presumption against the accused, nor be the subject of any comment before the court or jury by any attorney.

In the prosecution for a criminal offense as set forth in (i), (ii) or (iii) above, each shall be a competent witness except as to privileged communications.

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**Victim Impact Statement****VA Code §19.2–299**

- A. [Subsection A omitted]
- B. As a part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony, the court probation officer shall advise any victim of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be given the opportunity to submit to the Board a written statement in advance of any parole hearing describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii) to receive copies of such other notifications pertaining to the defendant as the Board may provide pursuant to subsection B of §53.1–155.
- C. D. [Subsections C and D omitted]

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**Victim Impact Statement****VA Code §19.2–299.1**

The presentence report prepared pursuant to §19.2–299 shall, with the consent of the victim, as defined in §19.2–11.01, in all cases involving offenses other than capital murder, include a Victim Impact Statement. Victim Impact Statements in all cases involving capital murder shall be prepared and submitted in accordance with the provisions of §19.2–264.5.

A Victim Impact Statement shall be kept confidential and shall be sealed upon entry of the sentencing order. If prepared by someone other than the victim, it shall (i) identify the victim, (ii) itemize any economic loss suffered by the victim as a result of the offense, (iii) identify the nature and extent of any physical or psychological injury suffered by the victim as a result of the offense, (iv) detail any change in the victim's personal welfare, lifestyle or familial relationships as a result of the offense, (v) identify any request for psychological or medical services initiated by the victim or the victim's family as a result of the offense, and (vi) provide such other information as the court may require related to the impact of the offense upon the victim.

If the court does not order a presentence investigation and report, the attorney for the Commonwealth shall, at the request of the victim, submit a Victim Impact Statement. In any event, a victim shall be advised by the local crime victim and witness assistance program that he may submit in his own words a written Victim Impact Statement prepared by the victim or someone the victim designates in writing.

The Victim Impact Statement may be considered by the court in determining the appropriate sentence. A copy of the statement prepared pursuant to this section shall be made available to the defendant or counsel for the defendant without court order at least five days prior to the sentencing hearing. The statement shall not be admissible in any civil proceeding for damages arising out of the acts upon which the conviction was based. The statement, however, may be utilized by the Virginia Workers' Compensation Commission in its determinations on claims by victims of crimes pursuant to Chapter 21.1 (§19.2–368.1 et seq.) of this title.

#### **Mental evaluation of defendant**

#### **VA Code §19.2–300**

In the case of the conviction in any circuit court of any person for any criminal offense which indicates sexual abnormality, the trial judge may on his own initiative, or shall upon application of the attorney for the Commonwealth, the defendant, or counsel for defendant or other person acting for the defendant, defer sentence until the report of a mental examination conducted as provided in §19.2–301 of the defendant can be secured to guide the judge in determining what disposition shall be made of the defendant.

Reports to be made by local law-enforcement officers, conservators of the peace, clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material submitted by other agencies. VA Code §19.2–390.

- A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or service of process upon, any person on charges resulting from an indictment, presentment or information, the arrest on capias or warrant for failure to appear, and the service of a warrant for another jurisdiction, on any of the following charges:
  - a. Treason;
  - b. Any felony;
  - c. Any offense punishable as a misdemeanor under Title 54.1; or
  - d. Any misdemeanor punishable by confinement in jail under Title 18.2 or 19.2, except an



arrest for a violation of §18.2–119, Article 2 (§18.2–266 et seq.) of Chapter 7 of Title 18.2, Article 2 (§18.2–415 et seq.) of Chapter 9 of Title 18.2, or any similar ordinance of any county, city or town.

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested. Fingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau.

2. For persons arrested and released on summonses in accordance with §19.2–74, such report shall not be required until (i) a conviction is entered and no appeal is noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court dismisses the proceeding pursuant to §18.2–251; or (iii) an acquittal by reason of insanity pursuant to §19.2–182.2 is entered. Upon such conviction or acquittal, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is completed after a determination of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report immediately following the person’s conviction or acquittal, and the individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him or ordered him committed to the custody of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.
- B. Within seventy-two 72 hours following the receipt of (i) a warrant or capias for the arrest of any person on a charge of a felony or (ii) a Governor’s warrant of arrest of a person issued pursuant to §19.2–92, the law-enforcement agency which received the warrant shall enter the person’s name and other appropriate information required by the Department of State Police into the “information systems” known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§52–12 et seq.) of Title 52 and the National Crime Information Center (NCIC), maintained by the Federal Bureau of Investigation. The report shall include the person’s name, date of birth, social security number and such other known information which the State Police or Federal Bureau of Investigation may require. Where feasible and practical, the magistrate or court issuing the warrant or capias may transfer information electronically into VCIN. When the information is electronically transferred to VCIN, the court or magistrate shall forthwith forward the warrant or capias to the local police department or sheriff’s office. When criminal process has been ordered destroyed pursuant to §19.2–76.1, the law-enforcement agency destroying such process shall ensure the removal of any information relating to the destroyed criminal process from the VCIN and NCIC systems.
- C. The clerk of each circuit court and district court shall make a report to the Central Criminal Records Exchange of (i) any dismissal, indefinite postponement or continuance, charge still pending due to mental incompetency or incapacity, nolle prosequi, acquittal, or conviction of, including any sentence imposed, or failure of a grand jury to return a true bill as to, any person charged with an

offense listed in subsection A, including any action which may have resulted from an indictment, presentment or information, and (ii) any adjudication of delinquency based upon an act which, if committed by an adult, would require fingerprints to be filed pursuant to subsection A. In the case of offenses not required to be reported to the Exchange by subsection A, the reports of any of the foregoing dispositions shall be filed by the law-enforcement agency making the arrest with the arrest record required to be maintained by §15.2-1722. Upon conviction of any person, including juveniles tried and convicted in the circuit courts pursuant to §16.1-269.1, whether sentenced as adults or juveniles, for an offense for which registration is required as defined in §19.2-298.1 9.1-902, the clerk shall within seven days of sentencing submit a report to the Sex Offender and Crimes Against Minors Registry. The report to the Registry shall include the name of the person convicted and all aliases which he is known to have used, the date and locality of the conviction for which registration is required, his date of birth, social security number, last known address, and specific reference to the offense for which he was convicted. No report of conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the Registry. In addition, each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition previously reported. When criminal process is ordered destroyed pursuant to §19.2-76.1, the clerk shall report such action to the law-enforcement agency that entered the warrant or capias into the VCIN system.

- D. In addition to those offenses enumerated in subsection A of this section, the Central Criminal Records Exchange may receive, classify and file any other fingerprints and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution.
- E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for maintaining correctional status information, as required by the regulations of the Department of Criminal Justice Services, with respect to individuals about whom reports have been made under the provisions of this chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange. The reports to the Exchange shall include any commitment to or release or escape from a state or local correctional facility, including commitment to or release from a parole or probation agency.
- F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported to the Exchange by the office of the Secretary of the Commonwealth.
- G. Officials responsible for reporting disposition of charges, and correctional changes of status of individuals under this section, including those reports made to the Registry, shall adopt procedures reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible by the most expeditious means and in no instance later than thirty 30 days after occurrence

of the disposition or correctional change of status; and (ii) to report promptly any correction, deletion, or revision of the information.

- H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records Exchange shall notify all criminal justice agencies known to have previously received the information.

As used in this section, the term “chief law-enforcement officer” means the chief of police of cities and towns and sheriffs of counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall be controlling.

**Sex Offender and Crimes Against Minors Registry;  
maintenance; access**

**VA Code §19.2–390.1**

The Department of State Police shall keep and maintain a Sex Offender and Crimes Against Minors Registry, separate and apart from all other records maintained by it.

**Application for driver’s license; proof of completion  
of driver education program; penalty**

**VA Code §46.2–323**

- A. Every application for a driver’s license, temporary driver’s permit, learner’s permit, or motorcycle learner’s permit shall be made on a form prescribed by the Department and the applicant shall write his usual signature in ink in the space provided on the form. The form shall include notice to the applicant of the duty to register with the Department of State Police as provided in §19.2–298.1 Chapter 9 (§9.1–900 et seq.) of Title 9.1, if the applicant has been convicted of an offense for which registration with the Sex Offender and Crimes Against Minors Registry is required.
- B. Every application shall state the name, year, month and date of birth, social security number, sex, and residence address of the applicant; whether or not the applicant has previously been licensed as a driver and, if so, when and by what state, and whether or not his license has ever been suspended or revoked and, if so, the date of and reason for such suspension or revocation. The Department, as a condition for the issuance of any driver’s license, temporary driver’s permit, learner’s permit, or motorcycle learner’s permit may require the surrender of any driver’s license or, in the case of a motorcycle learner’s permit, a motorcycle license issued by another state and held by the applicant. The applicant shall also answer any questions on the application form or otherwise propounded by the Department incidental to the examination. The applicant may also be required to present to the person conducting the examination a birth certificate or other evidence, reasonably acceptable to the Department, of his name and date of birth.

The applicant shall also certify that he is a resident of the Commonwealth by signing a certification statement, on a form prescribed by the Commissioner, and by providing satisfactory proof that he is a resident of the Commonwealth. The Commissioner may adopt regulations to determine the process by which applicants prove that they are residents of the Commonwealth.

If the applicant either (i) fails or refuses to sign the certification statement or (ii) fails to follow the process determined by the Commissioner for proving residency, the Department shall not issue the applicant a driver's license, temporary driver's permit, learner's permit or motorcycle learner's permit.

Any applicant who knowingly makes a false certification of Virginia residency or supplies false or fictitious evidence of Virginia residency shall be punished as provided in §46.2-348.

The Commissioner may, on a case-by-case basis, waive any provision of such regulations for good cause shown.

- C. Every application for a driver's license shall include a color photograph of the applicant supplied under arrangements made by the Department. The photograph shall be processed by the Department so that the photograph can be made part of the issued license.
- D. Notwithstanding the provisions of §46.2-334, every applicant for a driver's license who is under nineteen 19 years of age shall furnish the Department with satisfactory proof of his successful completion of a driver education program approved by the State Department of Education.

#### **Jailer to give notice of release of certain prisoners**

#### **VA Code §53.1-116.1**

Prior to the release or discharge of any prisoner serving a sentence upon a conviction of for an offense for which registration with the Sex Offender and Crimes Against Minors Registry is required as defined in §19.2-298.1 pursuant to Chapter 9 (§9.1-900 et seq.) of Title 9.1, the sheriff, jail superintendent or other jail administrator shall give notice to the prisoner of his duty to register with the State Police in accordance with §19.2-298.1. The sheriff, jail superintendent or other jail administrator shall also obtain from that person all necessary registration information, including fingerprints and photographs of a type and kind approved by the Department of State Police; inform the person of his duties regarding reregistration and change of address; and inform the person of his duty to register under this section. The sheriff, jail superintendent or other jail administrator shall forward the registration information to the Department of State Police within seven days of receipt.

#### **Department to give notice of release of certain prisoners**

#### **VA Code §53.1-160.1**

Prior to the release or discharge of any prisoner serving a sentence upon a conviction of for an offense for which registration with the Sex Offender and Crimes Against Minors Registry is required as defined in §19.2-298.1 pursuant to Chapter 9 (§9.1-900 et seq.) of Title 9.1, the Department shall give notice to the prisoner of his duty to register with the State Police in accordance with §19.2-298.1. The Department shall also obtain from that person all necessary registration information, including fingerprints and photographs of a type and kind approved by the Department of State Police, inform the person of his duties regarding reregistration and change of address, and inform the person of his duty to register under this section. The Department shall forward the registration information to the Department of State Police within seven days of receipt.

